

WILLIAM JOSH ARD, J.D., PH.D., M.B.A.

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Supreme Court Clerk  
P. O. Box 30052  
Lansing, MI 48909

Re: ADM File No. 2002-24

## **Advertising Material**

Dear Sir:

If the rule change as proposed had already been adopted, I would have to begin this letter with the ridiculous caption above.

My primary goal in writing this comment is to try to persuade the court not to adopt this change as written, but I would be happy if someone reading this, perhaps a fellow lawyer, would hire me for some purpose. I used to conduct research for a major advertising agency and have lectured on advertising law for Michigan State University. I realize that all communications from a business can affect purchasing behavior, whether or not the communication is officially an advertisement. Lawyers are no different

In elder law, my primary area of practice, lawyers have good reasons to disseminate information to inform the public. For example, there are many deceptive marketing campaigns that target veterans and their families and many outright illegal scams. Lawyers who send out such information have the primary purpose of informing the public, but no one can say that such lawyers would decline professional employment. If all of this information had to include the proposed caption, it would be much less effective. Many readers automatically toss anything labeled as advertisements into the trash, but might well pay attention to informational material. We can be assured that the deceptive marketers do not label their material as advertisements. This rule would make it more difficult

for attorneys to combat the deceptive messages.

The primary problem is that the Michigan proposal diverges significantly from the national rule proposed by the American Bar Association. Model Rule of Professional Conduct 7.3 limits the rule to lawyers “soliciting employment from a prospective client **known to be in need of legal services in a particular matter.**”

The emphasized phrase has been deleted in the Michigan version. That makes an enormous difference. This omission changes the rule from a specific prohibition against targeting advertising to a general rule about any potential communication that might facilitate obtaining a client.

If this rule were to be adopted here, it would be much safer and less confusing to adopt the form of the Model Rule.

Also, it would be important to adopt the national comment:

[7] The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

This comment could avert some of the intended mischief that could be caused by adoption of the rule.

Thank you for your attention.

Sincerely,

Josh Ard, J.D., Ph.D., M.B.A.

## **Advertising Material**

